

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Charles F. Hibbard,

Civil No. 06-2188 (RHK/FLN)

Petitioner,

ORDER

v.

Marty Anderson, Warden,

Respondent.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United States Magistrate Judge Franklin L. Noel dated August 14, 2006, all the files and records, and no objections having been filed to said Report and Recommendation,

IT IS HEREBY ORDERED:

1. The Report and Recommendation (Doc. No. 9) is **ADOPTED**;
2. Petitioner's Petition for Writ of Habeas Corpus (Doc. No. 1) is **GRANTED IN**

PART AND DENIED IN PART as follows:

- i. To the extent that Petitioner is seeking the Court to order the BOP to place Petitioner in an RRC with no available bed space, the petition is **DENIED WITH PREJUDICE**;
- ii. To the extent that Petitioner is seeking the Court to order the BOP to place Petitioner on home confinement in lieu of placement in an RRC, the petition is **DENIED WITH PREJUDICE**; and
- iii. To the extent that Petitioner is seeking reconsideration of the BOP's determination of his RRC eligibility, as required by the Eighth Circuit's ruling in Fults, the petition is **GRANTED**.

Dated: September 6, 2006

s/Richard H. Kyle

RICHARD H. KYLE
United States District Judge